

EXHIBIT A

COPY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
AEDES DE VENUSTAS, INC.,

Plaintiffs,

vs.

VENUSTAS INTERNATIONAL, LLC.,

Defendant.

-----x
DEPOSITION OF ROBERT GERSTNER

Monday, June 11, 2007

New York, New York 10175

Reported by:

Nikki Montello

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One Penn Plaza . NYC 10119 . tel (212) 244.3990 . fax (212) 268.4828 . email@tobyfeldman.com

June 11, 2007

10:10 a.m.

DEPOSITION OF ROBERT GERSTNER, held at the offices of JOSEPH M. HEPPT, ESQ., 521 Fifth Avenue, Suite 1805, New York, New York 10175, before Nikki Montello, a Notary Public within and for the State of New York.

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3 A P P E A R A N C E S:

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BY: ROBERT G. SHEPHERD, ESQ.,

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STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that filing, sealing and certification be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within examination may be signed and sworn to before any Notary Public with the same force and effect as though signed and sworn to before this court.

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2 restraining order said that you had done a
3 certain amount of business last year in terms
4 of revenue. Do you remember what that number
5 was?

6 A. Our sales in 2006?

7 Q. Yes, um-hum.

8 A. \$1.4 million, approximately.

9 Q. Okay. Now, sitting here today,
10 can you tell me how this would break down
11 between revenue that you get from the Web
12 site, the bricks and mortar store, consulting
13 services and product development? And you can
14 just do it in fractions.

15 A. Product development, consulting
16 and things as such?

17 Q. Yes. Just give me fractions. I
18 don't need numbers.

19 A. I would roughly say but I would
20 need to look into the numbers. But I would
21 say that the store is about 50 percent and
22 on-line and consulting services, including
23 product development, between ourselves and
24 with the other parties, about 25 percent. So
25 50 the store, 25 the on-line business and 25

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percent product development consulting,
roughly.

4 Q. Okay. All right. Now, tell me
5 what types of consulting services you do?

6 MR. HEPPT: When you say "you,"
7 you mean the business?

10 A. The company?

11 Q. Yes.

12 A. Well, we offer different types of
13 consulting. We scent fashion shows and
14 obviously sit with the designers beforehand to
15 discuss that --

16 Q. I'm sorry, you used a word there
17 that I didn't get.

18 A. We scent --

19 Q. Oh, scent.

20 A. -- fashion shows. So you discuss
21 with the designers how do you do this and what
22 to do. We have an extensive corporate
23 business where we scent especially for the
24 holiday season. We sit with our clientele and
25 discuss all of those things.

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2 Q. The corporate, would that be
3 gifting? In other words, figuring out what
4 gifts to send out to people?

5 A. That is part of it, yes.

6 Q. What else would it be?

7 A. It would be to the overhandling
8 the logistics, sending it out physically. It
9 goes all over the country. What kind of gift,
10 all that which is involved. We consult third
11 parties in product development, different
12 companies. We have done fragrances, skin
13 care.

14 Q. Why don't you tell me about that?

15 A. Well, there is one company we
16 developed a fragrance for them which they came
17 out with their own name, published that
18 fragrance.

19 Q. What was the company?

20 A. Back then it was called
21 THREEAsFOUR.

22 Q. THREE AS FOUR.

23 A. They have changed names -- no,
24 they were called AsFOUR back then and that I
25 believe was the name of the fragrance. Now

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2 they have changed the name. Now it is
3 THREEAsFOUR. Skin care company in San
4 Francisco called Duchess Marden.

5 Q. What did you do for them?

6 A. Helped them building up the
7 brands as far as the different products are
8 concerned. Do you need a cleanser? Do you
9 need a moisturizer? You should add a toner,
10 you know, ingredients.

11 Q. Now, let's go back one second.
12 Is there any other thing within the corporate
13 business section that you do other than the
14 consulting with them to develop gift programs?

15 A. I don't understand your question.

16 Q. Okay. Good.

17 You told me that, in response to
18 my question, you told me that what you do for
19 your corporate clientele is that you sit with
20 them around the holidays and you develop a
21 gift program and figure out the logistics of
22 how to get things to other places, is that
23 correct?

24 A. That's part of it. Yes.

25 Q. Okay. What else is there?

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2 A. Yes.

3 Q. Is that your signature?

4 A. Yes.

5 Q. Did you read it over before you
6 signed it?

7 A. Yes.

8 Q. Were you involved in the
9 preparation of that declaration?

10 A. No.

11 Q. Okay. Who prepared it?

12 A. Joe Heppt.

13 Q. Okay. But he talked to you
14 before he prepared it?

15 A. Yes.

16 Q. In the declaration you state that
17 since 1995 the company has spent \$440,000 on
18 advertising?

19 A. Um-hum.

20 Q. Where did that number come from?
21 Did you look through your books?

22 A. Yes.

23 Q. Okay. When you were looking
24 through your books, did you notice how much
25 you had actually spent last year on

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2 advertising?

3 A. We don't advertise --

4 Q. You don't --

5 A. -- in a classic sense, that we do
6 advertisement in papers.

7 Q. Okay.

8 A. This comes from different other
9 activities --

10 Q. All right. Can you --

11 A. -- where we promote the company,
12 catalogue, our catalogue.

13 Q. Oh, your catalogue. Okay.

14 A. Catalogues we have. The
15 investment in the Web site. Investment in
16 packaging, investment in product development.
17 Those are the numbers. Do we compare numbers
18 to previous year?

19 Q. Yes.

20 A. That's your question?

21 Q. Yes.

22 A. No, I don't.

23 Q. In the declaration you identify
24 consumer marketing as one of the things you do
25 to promote mark. What is that exactly?

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2 catalogues.

3 Q. Now, in that same declaration --

4 MR. SHEPHERD: Strike that.

5 (*r) I would like to ask you to have
6 him produce the --

7 MR. HEPPT: Newsletters?

8 MR. SHEPHERD: The newsletters
9 and the catalogues.

10 MR. HEPPT: I will take that
11 under advisement, sure.

12 MR. SHEPHERD: Okay. Sure.

13 Q. In the same declaration it says
14 that you promoted the mark through industry
15 activities. What does that mean?

16 A. I would consider scenting the
17 fashion shows, for example, what we get in
18 return also or events is press. And I'm sure
19 you have seen copies of the -- some of them,
20 which are in particular then published in WWD
21 and WWD Beauty Business, which is purely
22 within the industry. We had a lot of mention
23 in there, so that is what helps us or helped
24 us to get our name out and have people in the
25 industry recognize our name by doing events as

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2 think that we probably, individually have
3 hundreds and hundreds on-line, if you go
4 individually through every single product. So
5 this is a fraction of what is on-line.

6 Q. Okay. Now, I direct your
7 attention to the first page. That is the home
8 page, is it not?

9 A. That is the cover page, correct.

10 Q. Now, at the top of the page there
11 is a picture of a peacock, is there not?

12 A. Correct.

13 Q. And above it is the word Aedes
14 Magazine?

15 A. Correct.

16 Q. What is that?

17 A. That is an on-line magazine and
18 also it is an on-line magazine which there are
19 some copies of it attached to this exhibit.

20 Q. Is it in the -- so it is the, the
21 material in the back that you click on
22 publications. that is what comes up?

23 A. Some of it. But there is some
24 missing.

25 Q. Okay. Why do you call it the

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2 Aedes Magazine?

3 A. I don't understand.

4 Q. Well, why isn't it called Aedes
5 De Venustas Magazine?

6 A. Probably that is a question I
7 would need to ask Karl. He is the visual one,
8 as I said earlier. The creative person. He
9 probably just for visual purposes chose that.

10 Q. Okay. And what is the name of
11 your -- what is your domain name?

12 A. Aedes.com.

13 Q. Aedes.com? Do you also have a
14 Web site under Venustas.com?

15 A. No.

16 Q. Do you have any Web site in which
17 the word "Venustas" appears?

18 A. I can't answer that question. I
19 would need to ask Karl.

20 MR. HEPPT: I belatedly object to
21 the form of the question.

22 Q. Now, you have gift cards?

23 A. Yes.

24 Q. And how does the Web site on the
25 first page refer to that gift card?

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A. It says Aedes Gift Card and next to it is a picture of the gift card reading Aedes De Venustas.

5

Q. Then on the other side it says Delux Gift Wrap. Can you tell me about -- part of the business is the presentation of the fragrances, correct?

9

A. I guess in every part, everyone's business, that is part of it in the beauty industry.

12

Q. Okay. And do you have a

particular style of wrapping your product?

14

A. All products which we wrap are in a black gift box, and upon request we add fresh flowers on top of it.

17

Q. Okay. And it says here on the Web site, our new luxurious, black gift boxes are embossed with the Aedes goldleaf logo.

20

A. Um-hum.

21

Q. Does the word Aedes also appear on the box.

23

A. The word Aedes, yes.

24

Q. Does the word Venustas appear on the box?

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copy of the catalogue already?

3

MR. SHEPHERD: Yes.

4

Q. Now, a little bit further down below, Mr. Gerstner, it says newsletter. And it says Aedes Perfume News. Is that the newsletter we were talking about earlier?

5

6

7

8

A. The electronic newsletter, correct.

9

Q. And who does the Aedes Perfume News go to? It goes to anybody who fills in the E-mail address there?

10

A. Correct.

11

Q. Okay.

12

A. Approximately 10,000 people.

13

Q. Are the customers that come into the bricks and mortar store on your mailing list for the perfume news?

14

A. Some, I'm sure. Not all of them.

15

Q. Not all of them?

16

A. I wouldn't know.

17

Q. You wouldn't have any idea as to what that number was?

18

A. No.

19

Q. What is advertised on your Web

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2 A. Categories, fragrances, skin
3 care, body care, and home products.

4 Q. What are home products?

5 A. Candles, incense, potpourris,
6 room sprays, sachets. We are working on a new
7 device.

8 Q. Okay. Now, you have a trademark
9 registration that shows that you also sell
10 products that are labeled with the Aedes
11 Venustas mark, is that correct?

12 A. Aedes De Venustas, correct.

13 Q. Right. And which of the
14 categories that we've just discussed, the four
15 categories, do you have Aedes De Venustas
16 marked product for?

17 A. Bath and body and home.

18 Q. You don't sell any fragrances
19 under the Aedes De Venustas mark?

20 A. Not yet.

21 Q. Do you advertise the body care,
22 bath and body and the home products with the
23 Aedes De Venustas mark on the Web site?

24 A. Yes.

25 Q. Do you advertise any of your

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2 consulting services on the Web site?

3. A. No.

4 Q. Why is it that you don't
5 advertise any of your consulting services on
6 the Web site?

7 A. Because if we would at this
8 point, assuming there is a big response, we
9 just would not be in a position to handle them
10 yet.

11 Q. Okay. Do you advertise your
12 consulting services anywhere else?

13 A. Like?

14 MR. SHEPHERD: Strike that.

15 Q. Do you advertise your consulting
16 services anywhere?

17 A. Publicly, in print?

18 Q. Right.

19 A. No.

20 Q. Okay. Is there any other way
21 that you advertise your consulting services?

22 A. Word by mouth.

23 Q. That's all?

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A. Right. When we started, we began to bring particularly European companies under one roof, companies which some of them their roots go back to the 13th Century, who are not based on the mass market but based on the old tradition of perfume and the art of perfume.

8

This kind of concept in the last couple of years exploded. That is what the industry in these press pieces too, that is what the industry calls now they all use the term niche or specialty retail stores. Does that make sense as an explanation?

14

Now, this has exploded, you see this all over the place. There is also one of the articles clearly saying that this is one of the fastest growing segments of the market while the mass market doesn't.

19

So that's how I would describe a specialty retailer is concerned, what is now called also niche markets. Very exclusive, very limited distribution.

23

Q. So to you a specialty retailer is one that focuses on a single category, for example, in this case, the beauty category?

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2 MR. HEPPT: Objection to the
3 form.

4 MR. SHEPHERD: What is the nature
5 of the objection?

6 MR. HEPPT: I think it
7 mischaracterizes his testimony.

8 MR. SHEPHERD: Okay.

9 MR. HEPPT: I think it is not
10 what he said.

11 MR. SHEPHERD: Okay. Then we
12 will strike the question.

13 BY MR. SHEPHERD:

14 Q. Does specialty retailer mean to
15 you a retail establishment that focuses on a
16 single product category?

17 A. No. Not necessarily.

18 Q. Okay. Can you give me an example
19 of a specialty retailer, other than your
20 business?

21 A. Barney's, Bergdorf Goodman.

22 Q. How do you -- why do you think of
23 Barney's as a specialty retailer? How does
24 that fit into the definition you gave before?

25 A. Because they focus in different

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areas, beauty and clothing and whatever. And whatever they cover, they focus on specialty lines and brands which are not mass market.

5

Q. What is the difference between mass market and specialty retailer? Is it the quality of the product?

8

9

A. I would say the quality and also the distribution.

10

11

Q. Explain that to me, when you say the distribution?

12

13

14

15

16

17

18

19

A. Distribution, the number of doors, for example, in New York City, a brand would sell to. The mass market brand would sell to, I don't know, 30, 40 50 just in the City, versus the special brands. Specialty brands would maybe have two or three doors in the City. That is one of the big distinctions between mass market and specialty.

20

21

Q. When you say two or three, did you say two or three doors?

22

A. Yes.

23

24

Q. When you say "doors," do you mean stores?

25

A. Right.

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2 Q. Okay. Do you consider the Gap
3 stores to be mass market or specialty retail?

4 A. My personal opinion would be mass
5 market.

6 Q. Okay. Do you consider Victoria's
7 Secret to be mass market or specialty?

8 A. I don't know the operation well
9 enough to answer the question.

10 Q. Would you consider Ann Taylor to
11 be mass market or specialty.

12 A. I don't know their operation well
13 enough to answer that question.

14 Q. Okay. From using Barney's as an
15 example, it sounded to me like you are
16 familiar enough with that operation to give an
17 opinion, is that correct?

18 A. Yes, because I shop there.

19 Q. Okay. How many Barney's stores
20 are there throughout the City?

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2 talking about, one.

3 Q. Okay. This category that we are
4 talking about that you're in, fragrance, bath
5 and body, skin and home, can we call that the
6 beauty category?

7 A. I don't think so. Because there
8 is more to beauty than just that. Make up,
9 for example, which we don't do.

10 Q. Okay. All right. But those
11 things, those four categories -- well, let's
12 leave out the home since that seems to be --
13 would you consider the home products to fall
14 into the beauty category?

15 A. Yes.

16 Q. Okay. Do you consider -- now you
17 have told me that all of the -- that is beauty
18 category includes more than those four
19 products. But do you believe, do you agree
20 that those four products, fragrance, bath and
21 body, skin and home all fall in the beauty
22 category?

23 A. Do I believe those four fall
24 under the category of beauty?

25 Q. Yes?

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A. My personal opinion, yes.

3

Q. Okay. And, in your opinion, a specialty retailer is one whose products have limited distribution in any particular area?

6

A. That would be my personal

7

understanding and opinion, yes.

8

Q. Okay. Throughout the complaint and the -- your declaration and the brief, there is references to consulting services.

11

So far we've identified, I think, four categories of consulting services. You

scent fashion shows, you consult with corporations about gifting and other aspects of their business that might involve scent.

You have developed fragrances. You have

helped another company develop their beauty product line, that would be Duchess Marden.

And there are the two projects that we

discussed earlier that shall remain nameless for now, that you are consulting with the two companies.

23

Are there any other consulting services that you do?

24

25

A. That we do currently?

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2 Q. And then at the top of the second
3 page.

4 A. Page 10?

5 Q. Yes. In the first paragraph,
6 again, Internet security is so important to
7 Aedes and its customers. And then below that,
8 next paragraph, last line, all ordering
9 information is sent directly to Aedes.

10 Do you see that?

11 A. Yes.

12 Q. Is Aedes used in the business as
13 shorthand for Aedes De Venustas?

14 A. In what business?

15 Q. In your business

16 A. In our business?

18 A. No. Not really. It is -- the
19 company is, Aedes De Venustas. Some people
20 say Aedes, some people say Aedes De Venustas.
21 There is no really term for that.

22 Q. But you, yourself, use it on your
23 Internet site, is that correct?

24 A. What?

25 Q. Aedes?

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2 A. Some of the Internet pages read
3 Aedes and some read Aedes De Venustas. But if
4 I look through this, it has Aedes De Venustas
5 all over.

6 Q. Can you go to page 13?

7 A. 13.

8 Q. Yes.

9 A. Um-hum.

10 Q. It is the article from the New
11 York Times Magazine, December 2005.

12 A. Um-hum.

13 Q. If you -- if you read it through
14 and, particularly, you could look at just the
15 last line on that, page 13, you'll see again
16 use of the term Aedes.

17 Do you see that?

18 A. Um-hum.

19 Q. Now, how was this article
20 written? Did you do a press release which
21 they worked with? Were you interviewed?

22 A. We were interviewed.

23 Q. Okay. And did you see the
24 article before it came out?

25 A. No.

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2 it.

3 A. Okay. So -- yes.

4 Q. Who belongs to the Fashion Group
5 International?

6 A. I cannot answer the question top
7 of my head.

8 Q. Have you ever been to any of
9 their meetings?

10 A. Karl has. Not me.

11 Q. Karl has. Okay. And, well, if
12 you have never been to any of their
13 meetings -- has anyone ever told you how many
14 people attend these meetings?

15 A. No.

16 Q. Now, in another one of the many
17 articles that I read, it says that Aedes De
18 Venustas was a finalist for a FiFi Award.

19 A. Correct.

20 Q. What is a FiFi Award?

21 A. FiFi Award is the equivalent of
22 the Oscar's in the beauty industry.

23 Q. Who gives it out?

24 A. The FiFi Foundation.

25 Q. There is a separate -- there is a

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2 A. The one from March 16, 2007?

3 Q. That's right.

4 A. Um-hum.

5 Q. Have you ever heard of Robin
6 Burns-McNeill before?

7 A. Not that I can remember, no?

8 Q. Actually, in the article they
9 refer to her as Robin Burns. Does that name
10 ring a bell for you?

11 A. Prior to reading the article?

12 Q. Right.

13 A. Not that I remember, no.

14 Q. And you testified earlier that on
15 occasion Aedes De Venustas appears in Women's
16 Wear Daily.

17 Do you remember that?

18 A. Yes.

19 Q. Okay. Isn't there also another
20 Women's Wear Daily publication that you said
21 that they appear in?

22 A. That we appeared?

23 Q. Yes.

24 A. Yes.

25 Q. What is that?

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A. Well, there is a lot of different

3

W publications. There is W, there is WWD,

4

there is WWD Beauty Business or Beauty Buzz.

5

There is a bunch of other publications. But

6

we have been in some of them. Yes.

7

Q. Okay. Do you read that

8

publication with any regularity?

9

A. Myself?

10

Q. Yes?

11

A. Yes.

12

Q. Are the winners of the Fifis

13

announced or publicized in the Women's Wear

14

Daily publications?

15

A. Yes.

16

Q. Do you know that Robin Burns or

17

Robin Burns-McNeill, as she's known now, has

18

won several FiFi awards?

19

A. No.

20

Q. How do you think it's possible

21

for you to read Women's Wear Daily and to be

22

aware of the FiFi Awards and not to know who

23

Robin Burns-McNeill is?

24

A. From my understanding, she is

25

from -- she has a corporate background, Calvin

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Klein and Victoria's Secret or The Limited or
whatever.

4

5

6

7

Frankly, I don't read those
articles because I couldn't care less what
those companies do because it is very
different from what we do.

8

Q. Okay.

9

10

11

A. I don't have time every day to
sit and read the paper piece by piece by
piece.

12

13

14

As far as the FiFi Awards are
concerned, I never really looked into it prior
to our nomination in 2006.

15

16

17

Q. Okay. Now, I am going to show
you another document just so that you are not
guessing and you know what I'm talking about.

18

This is the complaint.

19

20

MR. SHEPHERD: Apparently, I only
reproduced marked up copies.

21

22

MR. HEPPT: Do you want a clean
copy? I could make it.

23

24

MR. SHEPHERD: I think this will
work. I will just read it to him.

25

MR. HEPPT: Okay.

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2 manufacturers. I mean, so I think it
3 is a misleading question.

4 MR. SHEPHERD: Okay. Let's ask a
5 different question.

6 MR. HEPPT: Okay.

7 Q. Of all the products that you
8 sell, what percentage are marked with the
9 trademark other than Aedes De Venustas?

10 A. I can't say top of my head. I
11 would need to look it up.

12 Q. Would you? Okay. Can you
13 come -- is it 90 percent?

14 A. I would need to look it up.

15 Q. Okay. Now, Aedes De Venustas
16 does have products that are made exclusively
17 for Aedes De Venustas, correct?

18 A. Correct.

19 Q. When you have a product that's
20 made exclusively for you, what part do you and
21 Karl Brandl play in the manufacturing of that
22 product, and what part does the manufacturer
23 play?

24 A. Well, physically manufacturing we
25 are not involved because that is the job of

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First of all, you know, after

3

having read the article, excuse my French, it
4 pissed us off. And then if we would have
5 known that we need logs, I would have
6 definitely done them. But, no, we didn't.

7

Q. Now, have you received any calls
8 since you sent the cease and desist letter to
9 Venustas International?

10

A. Yes, we got, about three weeks
11 ago, one phone call.

12

Q. Did you write down any
13 information about that call?

14

A. No. Like as to who it was?

15

Q. Right?

16

A. Yes, no.

17

Q. Okay.

18

A. No.

19

Q. Now, you yourself received some
20 of the calls?

21

A. Yes. The very last one, yes, and
22 then some of the other ones.

23

Q. Now, can you in the declaration,
24 it says that the calls from people asking to
25 speak with people at Venustas International

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2 including Sam Guson, the president and chief
3 executive officer also received and continue
4 to receive numerous telephone calls from
5 people in the fashion and beauty field
6 congratulating us on or asking about our new
7 contract with Ann Taylor.

11 A. That pretty much covers what was
12 said from what I know. I don't receive all
13 the phone calls. There is different people,
14 you know, picking up the phone but pretty
15 much.

16 Q. Well, at least for the calls you
17 received --

18 A. YEH

19 Q. -- that was everything?

20 A. Pretty much because we made it
21 very clear we are not affiliated or associated
22 with Venustas International whatsoever

23 Q. Okay. Now, it says that you
24 would receive telephone calls from people in
25 the fashion and beauty field. How do you know

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1 C E R T I F I C A T E

2 STATE OF NEW YORK)
3 COUNTY OF NEW YORK)
4 ss:)

5
6 I, NIKKI MONTELLO, a Notary Public
7 within and for the State of New York, do
8 hereby certify:

9 That ROBERT GERSTNER, the witness whose
10 examination is hereinbefore set forth, was
11 duly sworn by me and that this transcript
12 is a true record of the testimony given by
13 such witness.

14 I further certify that I am not related
15 to any of the parties to this action by
16 blood or marriage, and that I am in no way
17 interested in the outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set
19 my hand this 13th day of June,
20 2007.

21
22 Nikki Montello

23 NIKKI MONTELLO

24
25
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